

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2016

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THE HON'BLE MR.JUSTICE N. SESHASAYEE

C.M.A.No.418 of 2009
and M.P.No.1 of 2009
and
Cross Appeal.No.66 of 2009

C.M.A.No.418 of 2009:

The New India Assurance Company Ltd.,
435, D.B.Road, R.S.Puram,
Coimbatore. Appellant/3rd Respondent

Vs

1.Kuppathal
2.Subramaniam
3.Pappathi 1 to 3 Respondents/Claimants
4.Ravikumar
5.Rangaraj
(Respondents 4 & 5 were set exparte in the lower
court. Hence notice is dispensed with)
.... 4th & 5th Respondents/1st & 2nd
Respondents

Cross Appeal No.66 of 2009:

1.Kuppathal
2.Subramaniam
3.Pappathi ... Cross Appellants
Vs.

1.Ravikumar
2.Rangaraj
3.The New India Assurance Company Ltd.,
435, D.B.Road,
R.S.Puram,
Coimbatore ... Respondents
(1st & 2nd Respondents set exparte in Lower
Court. Hence 1st and 2nd Respondents Given up)

Prayer in CMA.No.418 of 2009: Civil Miscellaneous Appeal
preferred under Section 173 of the Motor Vehicles Act, 1988,
praying to set aside the award and decree dated 26.09.2008
passed in M.C.O.P.No.519 of 2007 on the file of the Motor
Accident Claims Tribunal / Sub Court, Dharapuram.

Prayer in Cross Appeal No.66 of 2009: Cross Appeal filed under Order 41 Rule 22 of C.P.C. against the award passed by the Motor Vehicle Accident Claims Tribunal, Sub Court at Dharapuram in MCOP.No.519 of 2007 dated 26.09.2008 and to allow this Cross Appeal.

C.M.A.No.418 of 2009:

For Appellant : Ms.G.Sukumari

For Respondents : Mr.V.Raghunathan [for R1 to R3]
for Mr.S.Dhanasekaran
RR4 & 5 - Ex parte

Cross Appeal No.66 of 2009:

For Cross Appellants : Mr.V.Raghunathan
for Mr.S.Dhanasekaran

For Respondents : Ms.G.Sukumari [for R3]
RR1 & 2 - Given up

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the award passed by the Motor Accident Claims Tribunal, Sub Court, Dharapuram in MCOP.No.519 of 2007.

2. Heard Ms.G.Sukumari, the learned counsel appearing for the Insurance Company and Mr.V.Raghunathan, the learned counsel appearing for respondents 1 to 3.

3.The claimants before the Tribunal were the heirs of Ammasaiappan, who lost his life in a road accident that took place on 06.06.2007 at about 9.00 a.m. in Kangeyam-Kovai Road, near Asthinapuram. The deceased was riding his moped bearing registration No.TN33-D-2923 and the fourth respondent was driving a car bearing registration No.TN41-L-3737 that belongs to the fifth respondent which he dashed it on the moped, owing to which Ammasaiappan lost his life. Under various heads, respondents 1 to 3 herein have claimed a sum of Rs.25,00,000/- and the Tribunal has awarded a sum of Rs.8,02,688 with interest @ 7.5% per annum with costs. While the Insurance Company, which is arrayed as third respondent before the Tribunal has preferred an appeal challenging essentially the quantum awarded, the claimants/respondents preferred cross appeal seeking enhancement of compensation.

4. The learned counsel who appears for the Insurance Company raised only one point. According to her, the Tribunal has fixed the income of the deceased as Rs.1,50,000/- per annum based on Ex.P16, and since he is 72 years old at that time, after providing one third for his personal expenses, Tribunal applied a multiplier of 5 on the net annual income of the deceased @ Rs.1,00,000/-, and granted a sum of Rs.5,00,000/- as compensation towards loss of pecuniary benefits.

5. The learned counsel for the respondents/claimants submitted that the foundation for arriving at the income by the Tribunal was based on Ex.P16, which this Court finds is the Income Tax Return Form of the deceased. This document shows that the net taxable income of the deceased at that relevant time was Rs.2,22,294/- and tax was accordingly paid on it. The learned counsel argued that in fitness of things, the Tribunal ought to have taken this amount as the annual income of the deceased and it has given no reason as to why this amount though evidentially proved before the Court was substituted by Rs.1,50,000/-

6. On the point argued by the learned counsel for the appellant, I do not find any merits. Award was essentially on the income stated in Ex.P16 and the learned counsel was not able to state why this document cannot be relied on.

7. Turning to the Cross-Objection filed by respondents 1 to 3, I am not able to appreciate how the Tribunal had arrived at a sum of Rs.1,50,000/-, and the basis for so arriving has not been delineated in the award. In the absence of any evidence to nullify Ex.P16, this Court necessarily needs to rely on that. Accordingly, the income of the deceased is fixed at the rate of Rs.2,22,390/-. Applying multiplier of 5 on that, the pecuniary loss is assessed at Rs.11,11,950/- This is payable with interest @ 7.5% per annum. As to the rest, the award of the Tribunal is confirmed. The cross objectors will be entitled to share the enhanced portion of the compensation in the same ratio in which they share the amount awarded by the Tribunal.

8. In the result, the Civil Miscellaneous Appeal is dismissed and Cross Objection is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
Sub Court, Dharapuram.

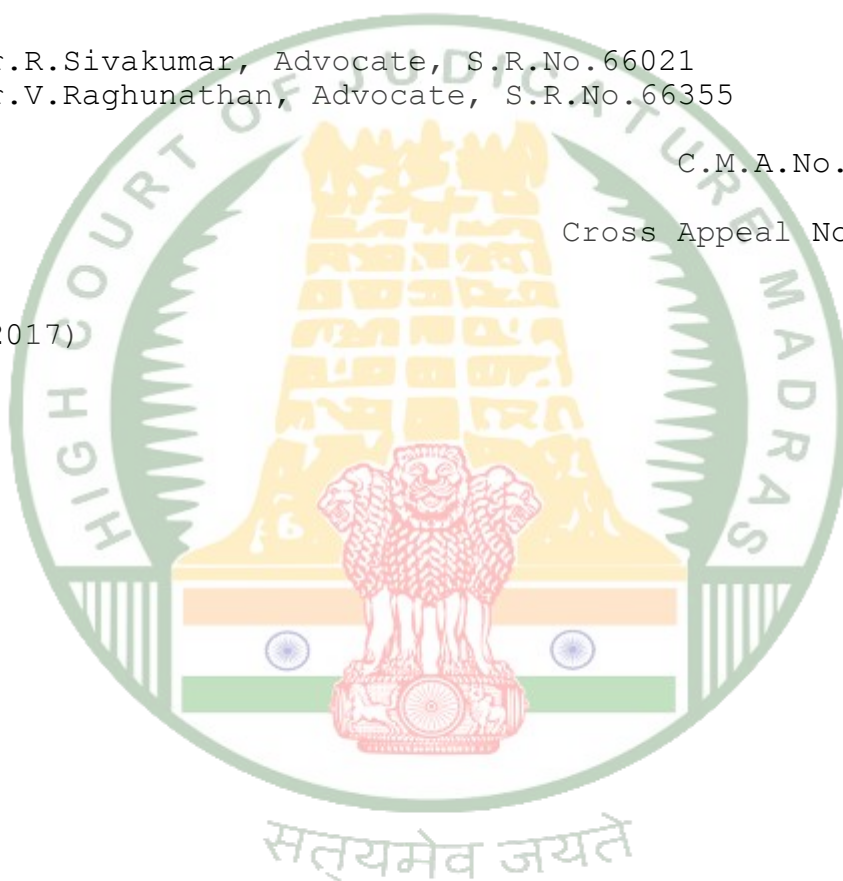
2.The Record Keeper,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.66021

+1cc to Mr.V.Raghunathan, Advocate, S.R.No.66355

C.M.A.No.418 of 2009
and
Cross Appeal No.66 of 2009

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